

Richard A. Ramler
Ramler Law Office, P.C.
202 West Madison
Belgrade, MT 59714
Telephone (406) 388-0150
Telefax (406) 388-6842
RichardRamler@aol.com

Jon D. Robinson
Bolen, Robinson & Ellis, LLP
202 South Franklin Street, 2nd Floor
Decatur, IL 62523
Telephone (217) 429-4296
Telefax (217) 329-0034
jrobinson@brelaw.com

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

RICHARD BARBER and BARBARA
BARBER,

Plaintiffs,

vs.

REMINGTON ARMS COMPANY, INC.,
SPORTING GOODS PROPERTIES, INC.,
And E.I. DuPONT DE NEMOURS AND
COMPANY,

Defendants.

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) Cause No. 2:12-cv-00043-BU-DLC
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) **PLAINTIFFS' RESPONSE TO**
) **DEFENDANTS' MOTION TO**
) **DISMISS**
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COMES NOW Plaintiffs, by and through their counsel of record, and hereby submit their Brief in Response to Defendants' Motion to Dismiss.

1. Plaintiffs are herewith filing their First Amended Complaint. Pursuant to F.R.C.P. 15(a)(1)(B), Plaintiffs are entitled to file an amended pleading once as a matter of course within 21 days after service of a motion under Rule 12(b). Defendants' Motion to Dismiss (Doc. 8) was filed on September 4, 2012.

2. Plaintiffs respectfully submit that Defendants' Motion to Dismiss is moot because Plaintiffs are filing herewith their First Amended Complaint. *Crown Parts and Machine, Inc. v. Con-Way Freights, Inc.*, CV-08-018-BLG-RFC, 2008 WL 1734769 (D. Mont.).

3. Although Defendants' Motion to Dismiss is moot, Plaintiffs object to Defendants filing of Exhibits A, B, C, D, E, F, G, H, I, and J, with their Rule 12(b)(6) Motion to Dismiss (Doc. 8, Att. 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10) because this is material which is outside the pleadings. In the event that Defendants in the future file a motion to dismiss the First Amended Complaint filed herewith, Plaintiffs will object to the presentation of these materials, and the use of photographs (See Doc. 9, p. 3 – 4) and any other materials which are outside the pleadings. *Lee v. City of Los Angeles*, 250 R.3d 668, 688 (9th Cir. 2001).

4. Plaintiffs object to any attempts by Defendants to convert a Rule 12 (b) or (c) motion to dismiss into a motion for summary judgment under Rule 56 when Plaintiffs have not yet had an opportunity to conduct discovery and before they have an opportunity to file the numerous Remington documents which support the allegations in their Complaint.

DATED this 21st day of September, 2012.

Respectfully Submitted,

/s/Richard A. Ramler

Richard A. Ramler
Counsel for Plaintiffs

/s/Jon D. Robinson

Jon D. Robinson
Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of September, 2012, a copy of the foregoing document was served on the following persons by and through the Electronic Case Filing System.

Clerk, U.S. District Court

Robert M. Carlson
Corette Pohlman & Kebe
129 West Park
P.O. Box 509
Butte, Montana 59703

Ramler Law Office, P.C.

By: /s/ Richard A. Ramler
Richard A. Ramler
Attorney for Plaintiffs